

Foreign Service Grievance Board Regulations

§ 906.1

(c) The Board shall expedite its decisions on requested suspensions of proposed Agency actions. The Board may permit or require argument with respect to such requests by the Parties and Exclusive Representative, if any.

[56 FR 55459, Oct. 28, 1991]

PART 905—BURDEN OF PROOF

Sec.

905.1 Grievances other than disciplinary actions.

905.2 Disciplinary grievances.

905.3 Separation for cause.

AUTHORITY: Secs. 610 and 1106 of the Foreign Service Act of 1980, Pub. L. 96-465 (22 U.S.C. 4010 and 4136), as amended.

§ 905.1 Grievances other than disciplinary actions.

(a) In all grievances other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.

(b) Where a grievant establishes that an evaluation contained falsely prejudicial material which may have been a substantial factor in an agency action, and the question is presented whether the agency would have taken the same action had the evaluation not contained that material, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

(c) Where a grievant establishes that a procedural error occurred which is of such a nature that it may have been a substantial factor in an agency action with respect to the grievant, and the question is presented whether the agency would have taken the same action had the procedural error not occurred, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

[50 FR 31356, Aug. 2, 1985]

§ 905.2 Disciplinary grievances.

In grievances over disciplinary actions, the agency has the burden of establishing by a preponderance of the evidence that the disciplinary action was justified, provided, however, that

in a grievance concerning suspension without pay pursuant to section 610(a)(3) of the Act, the Board's determination of the grievance shall be limited to:

(a) Whether the required procedures have been followed; and

(b) Whether there exists reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed and there is a nexus between the conduct and the efficiency of the Service.

For this purpose, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed shall be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for, a job-related crime.

[56 FR 55459, Oct. 28, 1991]

§ 905.3 Separation for cause.

In separation for cause cases, the agency has the burden of establishing, by a preponderance of the evidence, that the proposed separation is for such cause as will promote the efficiency of the service.

[50 FR 31356, Aug. 2, 1985]

PART 906—HEARINGS

Sec.

906.1 Decision whether to hold a hearing.

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AUTHORITY: Secs. 610 and 1106 of the Foreign Service Act of 1980, Pub. L. 96-465 (22 U.S.C. 4010 and 4136), as amended.

SOURCE: 50 FR 31356, Aug. 2, 1985, unless otherwise noted.

§ 906.1 Decision whether to hold a hearing.

After deciding either to accept jurisdiction over a grievance or to postpone decision of that question under § 904.2(a) of this chapter, the Board will make an initial determination of whether a hearing shall be held in accordance with part 906 of this chapter,

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or whether the grievance shall be resolved without a hearing in accordance with part 907 of this chapter. The Board may reconsider its decision as to holding a hearing upon the written request of any party or on its own initiative.

§ 906.2 Mandatory hearing.

The Board shall conduct a hearing—
(a) At the request of the grievant in any case which involves disciplinary action or a grievant's retirement from the Service for expiration of time-in-class or based on relative performance, or
(b) In any case which in the judgment of the Board can best be resolved by a hearing or presentation of oral argument. The Board shall also conduct a hearing in separation for cause proceedings unless the charged employee waives in writing his or her right to such hearing.

§ 906.3 Notification.

When the Board orders a hearing, the executive secretary shall so notify the parties in writing. The parties shall be given reasonable notice of the date and place selected by the Board for the hearing.

§ 906.4 Hearing panels and members.

Unless the Board and the parties agree otherwise, all hearings shall be held before a panel of at least three members.

§ 906.5 Prehearing conferences.

(a) The Board may in its discretion order a prehearing conference of the parties (which may be presided over by any member) for the purpose of considering:

- (1) Simplification or clarification of the issues;
- (2) Serving of interrogatories;
- (3) Stipulations, admissions, agreements on documents, matters already on record, or similar agreements which will avoid the necessity of proving facts or issues not in dispute;
- (4) Identification of witnesses the parties may wish to call and the intended scope of their testimony; limitation on the number of witnesses; and arrangement for the appearance of witnesses;
- (5) Avoidance of irrelevant, immaterial, or unduly repetitive testimony;

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(6) The possibility of disposition of the case through agreement;

(7) The order of presentation at the hearing and the allocation of the burden of proof; and

(8) Such other matters as may aid in the disposition of the case.

(b) The parties authorized to attend the hearing may attend the prehearing conference.

(c) The results of the conference shall be summarized in writing by the Board and made a part of the record of proceedings. Copies of the summary shall be sent to the parties. The parties may submit comments or corrections on the summary.

§ 906.6 Powers of presiding member.

In connection with the hearing, the presiding member shall, as appropriate:

- (a) Fix the time and place of the hearing;
- (b) Order further conferences;
- (c) Regulate the course of the hearing;
- (d) Administer oaths and affirmations;
- (e) Dispose of procedural requests and similar matters;
- (f) Rule on admissibility of testimony and exhibits;
- (g) Exclude any person from the hearing for behavior that obstructs the hearing;
- (h) Authorize and set the time for the filing of briefs or other documents;
- (i) Grant continuances and extensions of time;
- (j) Reopen the record;
- (k) Take any other action in the course of the proceedings consistent with the purpose of this part.

§ 906.7 Conduct of hearing.

(a) *Authorized attendance.* The parties and, as determined by the Board, a reasonable number of representatives of the parties are entitled to be present at the hearing. The Board may, after considering the views of the parties and of any other individuals connected with the grievance, decide that a hearing should be open to others. No person shall be permitted to attend the hearing when classified material is being discussed unless that person possesses the appropriate security clearance.

(b) *Procedure.* Hearings shall be conducted by the presiding member so as to assure a full and fair proceeding. The Board shall not be limited by the legal rules of evidence. However, the presiding member shall exclude irrelevant, immaterial, or unduly repetitive evidence. The Board may require the parties to designate one of their representatives as principal spokesperson.

(c) *Order of presentation.* In cases involving disciplinary action, including separation for cause cases, the Agency will ordinarily present its case first and will retain that order of precedence throughout the hearing. In other cases the grievant will ordinarily present his or her case first and will retain that order of precedence throughout the hearing.

(d) *Evidence.* Subject to the presiding member's rulings on the relevancy, materiality, and repetitious nature of evidence, the parties may offer such evidence, including interrogatories, depositions and Agency records as they desire. The shall produce such additional evidence as the presiding member shall consider relevant and material. Where deemed appropriate by the Board, the parties may be supplied only with a summary or extract of classified material (also see §903.9 of this chapter).

(e) *Testimony.* Testimony at a hearing shall be given under oath or affirmation.

(f) *Transcript.* A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

§906.8 Witnesses.

(a) *General.* Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition. A party wishing to take the deposition of a witness shall give the other parties reasonable notice of the time and place of the deposition and of the identity of the witness.

(b) *Availability.* Upon request of the Board or upon request of the grievant/charged employee deemed relevant and material by the Board, an Agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility. If the Board determines that the actual presence of such witness at the hearing is required for just resolution

of the case, the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Agency which is a party to the hearing.

(c) *Notice.* The parties are responsible for notifying their witnesses and for arranging for their appearance at the time and place set for the hearing. The Board may preclude a witness from testifying because of the failure of the party responsible for witness' appearance to comply with this section.

§906.9 Failure of party to appear.

The hearing may proceed in the absence of any party who, after due notice and without good cause, fails to be present or obtain an adjournment.

PART 907—PROCEDURE WHEN HEARING IS NOT HELD

AUTHORITY: Sec. 1106 of the Foreign Service Act of 1980, Pub. L. 96-465 (22 U.S.C. 4136), as amended.

§907.1 General.

(a) In a case in which a hearing is not required under §906.1 of this chapter, the Board may request in writing that specified documents or other evidence be furnished to it and/or may authorize the executive secretary to obtain such additional documents or other evidence as may be necessary to understand and decide the case.

(b) Each party will be offered the opportunity to review and to supplement, by written submissions, the record of proceedings, prior to the date fixed by the Board for closing of the Record. The Board shall then consider the case and make a decision based on that Record. This may include the ordering of a hearing in accordance with part 906.

[50 FR 31357, Aug. 2, 1985]

PART 908—REMEDIES

Sec.

908.1 Board orders.

908.2 Attorney fees.

908.3 Board recommendations.

AUTHORITY: Secs. 1106 and 1107 of the Foreign Service Act of 1980, Pub. L. 96-465 (22 U.S.C. 610, 4010, 4136, and 4137).